MADAM GOH GOK HOON

v.

EUSUFF BROTHERS SDN. BHD. & ORS.

HIGH COURT MALAYA, MALACCA
WAN YAHYA J
[CIVIL APPEAL NO. 12 OF 1982]
20 JUNE 1989

LANDLORD AND TENANT: *Rent Control premises - Suit for vacant possession - Sections 16, 17 of the Rent Control Act 1966.*

The appellant, a registered proprietor of a rent controlled premises let it out to the first defendant on 1 October 1959. There was no agreement between the parties. The only documentary evidence produced by the appellant are a letter, Exhibit P3 and a copy of receipts issued to the 1st respondent being P5, P6 and P7.

P5, P6 and P7 bore the following endorsement:

> No subtenancy or change of tenancy will be allowed or recognised without the written consent of the landlord to that effect.

Sometime in June 1971 the 2nd and 3rd respondents took over the tenancy of the whole of the premises from the 1st defendant. However, the rents continued to be paid by the 1st defendant and the receipts issued by the plaintiff to the 1st defendant.

According to the appellant, she was only aware of the 2nd and 3rd respondents' presence in the premises sometime in November 1975. She initially took out a suit and obtained an order of vacant possession of the premises from the 1st and 2nd respondents. Subsequently this order was set aside when the 3rd respondent intervened and was added on as the 3rd defendant.

The learned President rejected P5, P6 and P7 as inadmissible as they had different words written on them and are therefore not primary evidence within s. 62 of the Evidence Act 1950. Counsel for the applicant suggested that there is an error of law which had affected the decision of the President. This is not so as the President went on to consider in the alternative, the outcome of the case on the assumption that the exhibits were admissible. As a result he concluded that the restriction on subletting was conveyed to the 1st respondent only after the tenancy agreement had been concluded, and therefore the 1st defendant had no notice of it at the time when he wrote the letter of acceptance. The President arrived at this conclusion after considering the documentary evidence and the oral testimonies of witnesses. This finding is not improper nor against the weight of evidence. Thus, the prohibition against subletting did not form a term of the oral contract and consequently the 1st respondent was not bound by such restriction.

The President then held that the 2nd and 3rd respondent became lawful subtenants when they rented the premises from the 1st respondent with the plaintiff continuing to issue receipts in the name of the latter, and as such, the plaintiff had failed to establish her case within s. 16(1)(b) of the Rent Control Act 1966. However, on this finding, this Court differs from the President.

The 1st respondent should have supplied the plaintiff with particulars of the sub-letting in accordance with s. 20 of the Rent Control Act 1966. He did not do so. Failure to comply with s. 20(1)(a) constitutes an offence for which he could be punished under s. 20(6).

The 1st respondent's breach of his statutory obligation under s. 20(1)(a) will enable the plaintiff to obtain a judgment for repossession. However, once such judgment is obtained. Section 17 of the Act is activated and the order could not be enforced (except in specified circumstances), against any sub-tenants. Under s. 17(3), a sub-tenant who remains in possession after he had notice of the judgment or after being served with the order will cease to be a sub-tenant of the tenant and will become a tenant of the landlord subject to all the existing previous covenants.

Held:

[1] The plaintiff had succeeded in establishing her claim under s. 16(1)(b) of the Rent Control Act 1966 and therefore obtains possession against the 1st respondent, but she is precluded from evicting the 2nd and 3rd respondents by virtue of s. 17.

[2] In regard to the undisputed second issue raised by the plaintiff based on s. 16(1)(i) that the plaintiff was not personally in occupation, the outcome would have been exactly the same. Section 17 would also apply and the order would be enforceable against the 2nd and 3rd respondents.

[3] Although this Court's reasons differed slightly from the President's ground; it had nevertheless led to the same conclusion. This Court thus confirms the order made by him and dismiss this appeal.

[Appeal dismissed. 1st respondent to pay costs of the appeal.]

Legislation referred to:
Evidence Act 1950 s. 62
Rent Control Act 1966, ss. 16(1)(b), (1)(i), 17, 20(1)(a), (6)

For the plaintiff - De'Cruz (Andrew Goh with him); M/s. T.S. Goh & Co.
For the 1st defendant - M/s. Zain & Co. solicitor
For the 2nd defendant - Nelson; M/s. G.F. Nelson & Co.
For the 3rd defendant - Bashir; M/s. Bashir & Co.

JUDGMENT

Wan Yahya J:

The facts leading to the issue in this case had been sufficiently narrated in the learned President's ground of judgment. The appellant, a registered proprietor of a rent controlled premises let the premises out to the 1st defendant on 1 October 1959. There was no written agreement between the parties and the only documentary evidence produced by the appellant are a letter Exhibit P3, and a copy of the receipts issued to the 1st respondent (P5, P6, P7). The letter P3 reads as follows:

> Madam Goh Gok Hoon,
> 139, Heeren Street,
> Malacca.
>
> Dear Madam,
>
> House No. 12, Wolferstan Road, Malacca
>
> I/We hereby agree to rent the above premises from you as from 1 October 1959, at a monthly rental of Dollars One hundred and twenty five (RM125).
>
> Trusting you have no objection.

Yours faithfully,
Eusuff Bros: Limited.

Sd: ?
(S.N. Syed Hamid)
Director.

The receipts P5, P6 & P7 bore an endorsement to this effect:

> No subtenancy or change of tenancy will be allowed or recognised without the written consent of the landlord to that effect.

Sometime in June 1971 (as disclosed in his affidavit dated 9 May 1979) the 3rd defendant and his son the 2nd defendant took over the tenancy of the whole premises from the 1st defendant. However the rents were continually paid by the 1st defendant and the receipts continued to be issued by the plaintiff in the name of the 1st respondent.

According to the appellant she was only aware of the 2nd and 3rd respondents's presence in the premises sometime in November 1975. She initially took out a suit and obtained order of vacant possession of the premises from 1st and 2nd respondents. Subsequently this order was set aside when the 3rd respondent intervened and was added on as the 3rd defendant.

The appellant's claim in the present suit for vacant possession is based on defendant's breach under s. 16(1)(b) and 16(1)(i) of the Rent Control Act 1966.

The learned President rejected the documents P5, P6 and P7 as inadmissible as these receipts have different words written between the three and therefore not primary evidence within s. 62 of the Evidence Act. Counsel for the applicant suggested that there is an error of law which had affected the decision of the President. I do not think so because after that ruling the learned President went on to consider in the alternative the outcome of the case on the assumption that the exhibits were admissible. As a result he concluded that the restriction on subletting was conveyed to the 1st respondent only after the tenancy agreement had been concluded and therefore the 1st defendant had no notice of it at the time when he wrote the letter of acceptance. The learned President had arrived at this conclusion drawn not only from documentary evidence but also from oral testimony of witnesses whom he had the advantage of seeing and hearing at the trial. I cannot find anything improper in this finding of fact and neither do I see anything to suggest that the finding was against the weight of the evidence. I therefore agree and accept the fact as found by the learned President that prohibition against subletting did not form a term of the oral contract and consequently the 1st respondent was not bound by such restriction. In view of this finding, I do not propose to consider the admissibility of the receipts P3, P4 & P5. The learned President then went on to hold that the 2nd and 3rd respondents became the lawful subtenants when they rented the premises from the 1st respondent with the plaintiff continuing to issue receipts in the name of the latter. He accordingly held that the plaintiff had failed to establish her case to be within s. 16(1)(b). On this finding however I differ from the learned President.

Legally, the 1st respondent should have supplied the plaintiff with the particulars of the subletting in accordance with s. 20 of the Rent Control Act 1966 which reads:

> 20.(1) Where a tenant has sublet any part of the controlled premises, the tenant shall within fourteen days after each subletting or in the case of a subletting effected before the date of the coming into force of this Act within three months after that date:
>
> (a) supply the landlord with a statement in writing of the subletting, giving particulars of the occupancy, including the name of the subtenant and the rent charged.

In the present case he did not do so. In my opinion failure to comply with s. 20(1)(a) constitutes an offence for which the 1st respondent can be punished in accordance with s. 20(6). Now, the provision of s. 16(1)(b) on which the plaintiff's first claim is based authorises repossession of control premises in the following instance:

> (b) where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under this Act), so far as the obligation is consistent with this Act, has been broken or not performed by the tenant and the Court considers it reasonable that such order or judgment be made or given;

The mandatory provision of s. 20(1)(a) in directing the tenant to supply his landlord with the particulars of his subletting is clearly an obligation on the tenant, arising from and consistent with the Rent Control Act 1966. The failure of the tenant to comply with that section therefore must lead to a breach of the obligation envisaged under s. 16(1)(b) above.

The 1st respondent's default in complying with s. 20(1)(a) and the consequential breach of his statutory obligation under s. 20(1)(a) will give rise to the plaintiff's right to a judgment for repossession. However once such judgment has been obtained, s. 17 of the Act would come into effect and the order could not be enforced (except in specified circumstances) against any sub tenants holding the tenancy from the chief tenant. By virtue of subsection (3) of s. 17, a sub tenant who remain in possession after he had notice of the judgment or after being served with the order will cease to be a subtenant of the tenant and will himself become a tenant of the landlord subject to all the existing previous covenants.

I would therefore hold in this particular case that the plaintiff had succeeded in establishing her claim under s. 16(1)(b) and obtained possession against the 1st respondent but she would be precluded from evicting the 2nd and 3rd respondents by the provisions of s. 17.

The second issue raised by the plaintiff in his claim of repossession is based on s. 16(1)(i); that the plaintiff was not personally in occupation of the premises. Although this issue has not been disputed by the 1st respondent, the outcome of it would have been exactly the same as in the previous ground. Section 17 of the Act would similarly apply and the order could not be enforced on the 2nd and 3rd respondents.

For the above reasons, which although slightly differing from the learned President's ground, had nevertheless led to the same conclusion, I confirm the order made by him and dismiss this appeal. As the 1st respondent's failure to meet with his tenancy and statutory obligation had led to the institution of this suit, I agree that he alone should be made to pay the costs of this appeal.

Also found at [1990] 1 CLJ 1167